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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/741,957 | 12/20/2000 | Phil Delurgio | DEM1P004 | 7258 |

36088 7590 03/20/2007
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| EXAMINER |
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COLBERT, ELLA

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| ART UNIT | PAPER NUMBER |
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3694

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 03/20/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/741,957

Applicant(s)

DELURGIO ET AL

Examiner

Ella Colbert

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/28/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-20 are pending. Claims 1, 3, 4, 8, 9, 12, and 13 have been amended and claims 15-20 have been newly added in this communication filed 01/03/07 entered as Amendment submitted with filing of RCE and Request for Extension of Time.

The IDS filed 11/28/05 has been considered and entered.

2. The amendment to the Specification has overcome the Objection to the Specification and is hereby withdrawn.

3. The Amendment to claims 1 and 3 has overcome the 35 USC 112 second paragraph rejection to claims 1 and 3 and is hereby withdrawn.

Continued Examination Under 37 CFR 1.114

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/03/07 has been entered.

Claim Objections

5. Claims 1 and 3 are objected to because of the following informalities: Claim 1, the third claim limitation recites "generating imputed variables, using the computer system, wherein said imputed variables are generated by imputing at least one missing data point when the at least one data point is missing;" . This claim limitation is redundant. The claim limitation would be better recited as "generating imputed

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variables, using the computer system, wherein said imputed variables are generated by imputing at least one missing data point;”. It is understood that “the data point is missing”. Claim 3 has a similar problem. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites “cleaning the sales data” and claim 3 recites “cleansing the sales data”. It is unclear what Applicants’ mean by “cleaning the sales data” and “cleansing the sales data”. Do Applicants’ mean in claim 3 for claim 3 to recite “cleaning the sales data” in order to be in agreement with claim 1? Applicants’ are respectfully requested to point out in the specification where “cleaning the sales data” and “cleansing the sales data” are defined.

Claims 1-4, 8, 9, 10, 13, 17, and 19 recite “store” which is very vague and indefinite. It is unclear from the claim language whether Applicants’ mean “a place to store data” or a “merchandise store” which deals with inventory and product sales.

Claims 1, 3, and 18-20 contain a clause of intended use in the independent claims which renders the claims indefinite. Specifically, claim 1 after the second claim limitation recites “wherein said imputed variables are generated by imputing at least one missing data point ...”.

The Examiner considers these limitations to only recite what is expected to happen, a desired result, or an intended use. The MPEP discusses a type of limitation in reference to "wherein" clauses. MPEP § 2111.04 states:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are:

- (A) "adapted to" or "adapted for" clauses;
- (B) "wherein" clauses; and
- (C) "whereby" clauses.

Claims 3 and 18-20 have a similar problem.

Claims 2 and 4-20 are also rejected because they depend from a rejected base claim.

Conclusion

8. Applicants' have not responded to the request regarding the source(s) where the formulas in the Specification and the newly added claims are found and the Applicants' have not produced any documents relating to the formulas or presented evidence that the formulas are the Applicants' own formulas. Applicants' are respectfully requested to submit any evidence regarding the formulas in the Applicants' Specification and claims in an effort to advance prosecution of the application.


Inquiries

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 18, 2007


ELLA COLBERT
PRIMARY EXAMINER